

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 62 & 41
94TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 22, 2007, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bills Nos. 62 and 41, adopted February 28, 2007.

Taken up for Perfection February 28, 2007. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

0149S.03P

AN ACT

To repeal sections 563.011, 563.031, 563.036, and 563.041, RSMo, and to enact in lieu thereof four new sections relating to the use of force.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 563.011, 563.031, 563.036, and 563.041, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 563.011, 563.031, 563.041, and 563.074 to read as follows:

563.011. As used in this chapter **the following terms shall mean:**

2 (1) "Deadly force" [means], physical force which the actor uses with the
3 purpose of causing or which he **or she** knows to create a substantial risk of
4 causing death or serious physical injury[.];

5 (2) "Dwelling" [means], any building [or], inhabitable structure, [though
6 movable or temporary, or a portion thereof, which is for the time being the actor's
7 home or place of lodging.] **or conveyance of any kind, whether the
8 building, inhabitable structure, or conveyance is temporary or
9 permanent, mobile or immobile, which has a roof over it, including a
10 tent, and is designed to be occupied by people lodging therein at night;**

11 (3) "Forcible felony", any felony involving the use or threat of
12 physical force or violence against any individual, including but not
13 limited to murder, robbery, burglary, arson, kidnapping, assault, and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 **any forcible sexual offense;**

15 [(3)] (4) "Premises", includes any building, inhabitable structure and any
16 real property[.];

17 [(4)] (5) "Private person" [means], any person other than a law
18 enforcement officer;

19 (6) "**Remain after unlawfully entering**", to remain in or upon
20 premises after unlawfully entering as defined in this section;

21 (7) "**Residence**", a dwelling in which a person resides either
22 temporarily or permanently or is visiting as an invited guest;

23 (8) "**Unlawfully enter**", a person unlawfully enters in or upon
24 premises when he or she enters such premises and is not licensed or
25 privileged to do so. A person who, regardless of his or her purpose,
26 enters in or upon premises that are at the time open to the public does
27 so with license unless he or she defies a lawful order not to enter,
28 personally communicated to him or her by the owner of such premises
29 or by another authorized person. A license to enter in a building that
30 is only partly open to the public is not a license to enter in that part of
31 the building that is not open to the public.

563.031. 1. A person may, subject to the provisions of subsection 2 of this
2 section, use physical force upon another person when and to the extent he **or she**
3 reasonably believes such force to be necessary to defend himself **or herself** or a
4 third person from what he **or she** reasonably believes to be the use or imminent
5 use of unlawful force by such other person, unless:

6 (1) The actor was the initial aggressor; except that in such case his **or**
7 **her** use of force is nevertheless justifiable provided:

8 (a) He **or she** has withdrawn from the encounter and effectively
9 communicated such withdrawal to such other person but the latter persists in
10 continuing the incident by the use or threatened use of unlawful force; or

11 (b) He **or she** is a law enforcement officer and as such is an aggressor
12 pursuant to section 563.046; or

13 (c) The aggressor is justified under some other provision of this chapter
14 or other provision of law;

15 (2) Under the circumstances as the actor reasonably believes them to be,
16 the person whom he **or she** seeks to protect would not be justified in using such
17 protective force;

18 (3) **The actor was attempting to commit, committing, or escaping**

19 **after the commission of a forcible felony.**

20 2. A person may not use deadly force upon another person under the
21 circumstances specified in subsection 1 of this section unless:

22 **(1) He or she** reasonably believes that such deadly force is necessary to
23 protect himself **or herself** or another against death, serious physical injury,
24 [rape, sodomy or kidnapping or serious physical injury through robbery, burglary
25 or arson] **or any forcible felony; or**

26 **(2) Such force is used against a person who unlawfully enters,**
27 **remains after unlawfully entering, or attempts to unlawfully enter a**
28 **dwelling, residence, or vehicle lawfully occupied by such person;**

29 **3. A person does not have a duty to retreat from a dwelling,**
30 **residence, or vehicle where the person is not unlawfully entering or**
31 **unlawfully remaining.**

32 **[3.] 4.** The justification afforded by this section extends to the use of
33 physical restraint as protective force provided that the actor takes all reasonable
34 measures to terminate the restraint as soon as it is reasonable to do so.

35 **[4.] 5.** The defendant shall have the burden of injecting the issue of
36 justification under this section.

 563.041. 1. A person may, subject to the limitations of subsection 2, use
2 physical force upon another person when and to the extent that he **or she**
3 reasonably believes it necessary to prevent what he **or she** reasonably believes
4 to be the commission or attempted commission by such person of stealing,
5 property damage or tampering in any degree.

6 2. A person may use deadly force under circumstances described in
7 subsection 1 only when such use of deadly force is authorized under other sections
8 of this chapter.

9 3. The justification afforded by this section extends to the use of physical
10 restraint as protective force provided that the actor takes all reasonable measures
11 to terminate the restraint as soon as it is reasonable to do so.

12 4. The defendant shall have the burden of injecting the issue of
13 justification under this section.

 563.074. 1. **Notwithstanding the provisions of section 563.016, a**
2 **person who uses force as described in sections 563.031, 563.041, 563.046,**
3 **563.051, 563.056, and 563.061 is justified in using such force and such**
4 **fact shall be an absolute defense to criminal prosecution or civil**
5 **liability.**

6 **2. The court shall award attorney's fees, court costs, and all**
7 **reasonable expenses incurred by the defendant in defense of any civil**
8 **action brought by a plaintiff if the court finds that the defendant has**
9 **an absolute defense as provided in subsection 1 of this section.**

 [563.036. 1. A person in possession or control of premises
2 or a person who is licensed or privileged to be thereon, may, subject
3 to the provisions of subsection 2 of this section, use physical force
4 upon another person when and to the extent that he reasonably
5 believes it necessary to prevent or terminate what he reasonably
6 believes to be the commission or attempted commission of the crime
7 of trespass by the other person.

8 2. A person may use deadly force under circumstances
9 described in subsection 1 of this section only:

10 (1) When such use of deadly force is authorized under other
11 sections of this chapter; or

12 (2) When he reasonably believes it necessary to prevent
13 what he reasonably believes to be an attempt by the trespasser to
14 commit arson or burglary upon his dwelling; or

15 (3) When entry into the premises is made or attempted in
16 a violent and tumultuous manner, surreptitiously, or by stealth,
17 and he reasonably believes that the entry is attempted or made for
18 the purpose of assaulting or offering physical violence to any
19 person or being in the premises and he reasonably believes that
20 force is necessary to prevent the commission of a felony.

21 3. The defendant shall have the burden of injecting the
22 issue of justification under this section.]

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